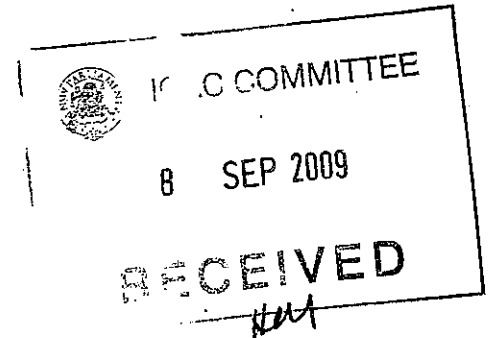




Mr Frank Terenzini MP
Chair
Committee on the Independent Commission Against Corruption
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000



3rd September 2009

Dear Mr Terenzini,

Inquiry into the protection of public sector whistleblower employees

I refer to your letter of 20 August 2009 referenced above and respond as follows:

Current status of policies and procedures

The Protected Disclosures Policy applicable to the Parliament, including all Electorate Officers was reviewed and updated on 23 April 2009. A copy of the policy is attached.

One material change was made to the policy from the previous version. This change added the Executive Manager Department of Parliamentary Services to the list of department heads to which protected disclosures could be made.

Information sessions were held in June of this year to communicate principles around the Code of Conduct, Ethics and Protected Disclosures. In total 65 staff attended these sessions with the majority being Electorate Officers. A copy of the training material is available for review if you would like to review its content.

Future review and amendment processes

The Department of Parliamentary Services will shortly begin a review of its policy and procedure suite in order to develop a policy governance framework and to establish refresh and review procedures for policies and procedures applicable to the Parliament. As part of this review the policies and procedures themselves will also be reviewed to ensure they are relevant, consistent and required. The policies and procedures pertaining to Protected Disclosures will be included in this review.

As part of the restructure of the Organisational Development team within the Department of Parliamentary Services, resources will be allocated to the development of specific training across a broad range of subjects for the Parliament. It is envisaged that this training catalogue will expand and continue training pertaining to the Code of Conduct, Ethics and Protected Disclosures, particularly for Electorate Officers of Members of the Legislative Assembly, Secretaries/Research Assistants to Members of the Legislative Council and will also include training for the Organisational Development team to enable them to more effectively act as a point of reference for Protected Disclosure enquiries.



Department of Parliamentary Services

Parliament of New South Wales, Macquarie Street, Sydney, NSW 2000

Phone 61 (02) 9230 3588

Fax 61 (02) 9230 3370

It is also intended that the expanded training catalogue will include modules for department heads outlining their responsibilities and reinforcing their skills to appropriately respond to Protected Disclosures.

Should you require any further information, please do not hesitate to contact me.

Yours Sincerely

A handwritten signature in black ink that reads 'B. A. Ward'.

Brian Ward
Executive Manager
Department of Parliamentary Services

Encl

Protected Disclosures

Introduction

The Protected Disclosures Act 1994 aims to encourage and facilitate disclosures by public officials in relation to corrupt conduct, maladministration or serious or substantial waste of public money.

The Act achieves this by:

- enhancing and augmenting established procedures for making disclosures;
- protecting persons from reprisals that might otherwise be inflicted upon them because of these disclosures; and
- providing a mechanism which ensures that disclosures can be properly investigated and dealt with.

What Disclosures are Protected?

The Act provides protection to public officials who make disclosures which concern:

- corrupt conduct;
- maladministration; or
- serious or substantial waste of public money.

Corruption is defined in sections 8 and 9 of the Independent Commission Against Corruption Act 1988. The definition used in the Act is very broad, but generally concerns the dishonest or partial exercise of official functions by a public official.

Corruption can take many forms, including: taking or offering bribes, public officials dishonestly using influence, black-mail, fraud, election bribery and illegal gambling. These are just some examples.

Maladministration is defined in section 11 of the Protected Disclosures Act 1994 as conduct that involves action or inaction of a serious nature that is: contrary to the law; or unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.

The Auditor-General has provided the following definition of "serious and substantial waste of public money":

any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss/wastage of public funds/resources.

What Protection is Provided?

The Act provides protection to public officials who make a protected disclosure. All employees of the Parliament are "public officials" under the Act.

A person who makes a protected disclosure is not subject to any liability for making a protected disclosure and no action, claim or demand can be made of or against the person for making the disclosure.

The Act also provides protection by imposing penalties (up to \$5000 and/or 12 months imprisonment) on a person who takes detrimental action against another person in reprisal for a protected disclosure.

Detrimental action is action which may cause, comprise or involve any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; or
- disciplinary proceedings.

When is a Disclosure Protected?

For a disclosure of information to be deemed a “protected disclosure” it must be made by a public official, either:

- to the head of the organisation; or
- in accordance with established reporting procedures within the organisation; or
- direct to either the ICAC, Ombudsman or Auditor-General.

Disclosures made to a journalist or Members of Parliament are protected if certain conditions are met. The person making the disclosure to a journalist or Member of Parliament must have made the same disclosure to the head of their organisation or in accordance with established reporting procedures within the organisation or direct to either the ICAC, Ombudsman or Audit Office. In this case protection is only available if the information provided is substantially true and the investigating authority or public authority to whom the matter was referred:

- has decided not to investigate the matter;
- has decided to investigate the matter but not completed the investigation within six months of the original disclosure;
- has investigated the matter but not recommended any action in respect of the matter; or
- has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.

Procedures for Making Protected Disclosures

In the first instance, disclosures should be made within the Parliament or direct to an investigating authority.

Within the Parliament: - Staff may make a protected disclosure either verbally or in writing. This may be done through any of the following Department Heads:

The Executive Manager Parliamentary Services
The Clerk of the Legislative Assembly; or
The Clerk of the Parliaments; or

A collective disclosure to all of the above Department Heads.

If a disclosure is made in writing it should be submitted to the Department Head/s in a sealed envelope and clearly marked “private and confidential”. If a disclosure is to be made verbally, a meeting with the Department Head/s should be requested. All disclosures will be treated in the strictest confidence. However, in some circumstances the source of the disclosure will need to be revealed so that the matter can be fully investigated.

To an Investigating Authority - Staff may make a disclosure by contacting:

- the Independent Commission Against Corruption, if the disclosure concerns corrupt conduct; or
- the NSW Audit Office, if the disclosure concerns a serious and substantial waste of public money; or
- the NSW Ombudsman, if the disclosure concerns maladministration.

Address and phone numbers for each authority are listed below. The investigating authority will advise what action needs to be taken to make a disclosure.

Because of the special nature of the Parliament and its Members there are limitations on the powers of investigating authorities (particularly the NSW Ombudsman and Audit Office) to investigate the Parliament and its Members. If staff are making a disclosure to an investigating authority they should raise this issue and clearly indicate the involvement of the Parliament and/or the involvement of a particular Member/s. Please note that these limitations in no way reduce the protection provided to staff of the Parliament who make a protected disclosure.

To a Member of Parliament or Journalist - Staff may make disclosures to a Member of Parliament or journalist, but these disclosures are only protected in some circumstances (see *When is a Disclosure Protected?* above).

For More Information

If you have any inquiries in relation to protected disclosures contact Human Resources staff on x3026 or x2330.

Information can also be obtained from any investigating authority:

Independent Commission Against Corruption

ICAC

GPO Box 500

SYDNEY NSW 2001

Tel: Duty Assessment Officer (02) 8281 5999 or 1800 463 909

Email: icac@icac.nsw.gov.au

The Audit Office of New South Wales

Level 15

1 Margaret Street

SYDNEY NSW 2001

Tel: (02) 9275 7100

NSW Ombudsman

Level 24

580 George Street

SYDNEY NSW 2000

Tel: (02) 9286 1000 or 1800 451 524